IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 303 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

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TUNNA RADHESHAYM DUBE - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
THROUGH JAIL for Appellant(s):1,MS ROOPAL R PATEL for Appellant(s):1,
MS DS PANDIT, LD.APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 13/09/2007

ORAL JUDGMENT

1. The appellant-orig.accused (hereinafter referred to as 'the appellant') has preferred the present appeal under Section 374 of the Code of Criminal Procedure, 1973, challening the judgment and order of conviction and sentence dated 13th January 2004 passed by the

learned Joint District Judge and Additional Sessions Judge, Fast Track Court No.1, Bharuch, in Special N.D.P.S. Case No.5 of 2002, whereby the learned trial Judge has held the appellant guilty for the charge of offences punishable under Section 8(C) and 20(B) of the Narcotics, Drugs and Psychotropic Substances Act (hereinafter referred to as 'the Act') and sentenced him to undergo rigorous imprisonment for five years and a fine of Rs.50,000/- and in default of making payment of fine, the appellant is ordered to undergo simple imprisonment for six months.

2. The charge against the appellant has been framed on the strength of the complaint registered by Dahej Police of District Bharuch being C.R.No.II-31 of 2002, which interalia reads as under :

That on 24.09.2002 at 05-00 p.m., you the accused being caught with conscious possession of 1.800 kgs. of Ganja amounting to

Rs.7,200/-, and also cash amount of Rs.2120/-, without any pass or permit with an intention to illegal trafficking the same and also with an intention to sell the same, have committed offence punishable under Section 8(C) and 20(B) of the N.D.P.S. Act.

3. As per the say of the prosecution, on the information received and recorded by the police, the members of the raiding party were waiting for arrival of the appellant. The description of the appellant was also given to the police by the informant and also as to the quantum of Ganja which was being carried by the appellant. Ultimately, the information was found correct and the appellant was intercepted and thereafter, searched. He was found in a conscious possession of 1800 grams of Ganja and some amount to the tune of Rs.2120/- in cash. The basic facts have been proved by the prosecution witnesses and mainly by Sabarsinh Vaghubhai Sagor-complainant PW-8, the Police Sub Inspector of Dahej Police Station, who has been examined vide Ex.50. The

complaint is at Ex.44. The panchnama of search and seizure is also proved by the Shri Maheshchandra Mathurbhai Patel, Circle Police Inspector, PW-7 who has been examined vide Ex.43. The other witnesses have corroborated the say of the complainant PW-8 and the said PW-7 Circle Police Inspector. PW-3 Ambalal Babubhai Soni has proved that he was called at the Dahej Police Chowki by the Police and he had weighed the muddamal Ganja recovered from the appellant. According to this witness, the person who had come out of the bus was intercepted and from him the muddamal Ganja was recovered. Meaning thereby, the police witnesses are supported by the independent witnesses. The photographs of each important procedure were taken by the Police and they have been produced and proved during the course of trial.

4. After going through the evidence and the judgment and order under challenge, the learned counsel appearing for the appellant Ms.Roopal Patel has submitted that the appellant is not interested in pressing the

present appeal against the judgment and order of conviction and sentence and it is clear that the conviction is recorded after assigning good sound reasons.

5. The alternative argument of Ms.Roopal Patel, learned counsel appearing for the appellant, is that the punishment imposed by the learned trial Judge is harsh and is required to be reduced to two to three years because ultimately the Ganja found from the appellant was somewhat more than the small quantity prescribed under the Act. As per the schedule, the Ganja upto 1000 grams is considered to be a small quantity and a person if found in possession of Ganja of more than 1 kg. but less than 20 kgs. can be imposed maximum punishment upto 20 years. The commercial quantity of Ganja as per the schedule is 20 kgs. or more. So the punishment of five years can be said to be a harsh punishment. The stock of Ganja found from the appellant was even less than 2 kgs. The punishment prescribed for small quantity of Ganja is of six months and a fine of Rs.10,000/-. Here in

the present case, the fine imposed by the learned trial Judge is to the tune of Rs.50,000/- and substantive sentence imposed is of five years. At present the appellant is in prison since long as he has not been enlarged on bail. He is a poor person and so he was not able to pay the amount of fine and even he could not apply for bail also.

6. In response to the query raised by the Court, according to Ms.D.S. Pandit, learned Additional Public Prosecutor, appearing on behalf of the respondent-State, the punishment under the Act may not be reduced, especially when the appellant was intercepted and searched on receipt of the information. The appellant, therefore, must be a regular trafficker and his arrest is not accidental or incidental.

7. So keeping in mind the totality of facts and circumstances of case and the quantum of Ganja found from the appellant, some punishment if is reduced, it would meet the ends of justice because there is enough force in the say of

Ms.Roopal Patel that the learned trial Judge ought to have imposed punishment keeping in mind the minimum punishment prescribed for possessing Ganja upto 1 kg. So without reducing the amount of fine imposed by the learned trial Judge or the punishment imposed by way of indefault punishment, the substantive sentence is required to be reduced to 4 years instead of two to three years as submitted by Ms.Roopal Patel by accepting her alternative argument.

8. In view of aforesaid observations and discussion, the present appeal is partly allowed. The judgment and order of conviction dated 13th January 2004 passed by the learned Joint District Judge and Additional Sessions Judge, Fast Track Court no.1, Bharuch, in Special N.D.P.S. Case No.5 of 2002 is upheld and the substantive sentence imposed by the learned trial Judge is hereby modified and reduced to the extent that the appellant now shall undergo rigorous imprisonment for 04 (four) years instead of rigorous imprisonment for 05 (five) years for the offence in

question. The sentence of fine and the indefault punishment for the same is confirmed so far as offences in question are concerned. If the appellant has already served the aforesaid punishment and even the indefault punishment on account of non-payment of fine, he shall be set at liberty forthwith, provided he is not required by the Jail Authorities for any other offence.

(C.K. Buch, J)

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